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JAN 26 2005

In re Application of :
David Bogart Dort :
Application No. 10/710,856 : ON PETITION
Filed: August 8, 2004 :
Attorney Docket No. VRBA.P016A :

OFFICE OF PETITIONS

This is a decision on the petition filed November 29, 2004 requesting that the above-identified application retain the presently accorded a filing date of August 8, 2004, with Figure 12 as part of the original disclosure.

On August 8, 2004, the above-identified application was filed. On September 29, 2004, the Office of Initial Patent Examination mailed a "Notice of Omitted Items in a Nonprovisional Application" stating that the application had been accorded a filing date of August 8, 2004, however, figures 12 as described in the specification appeared to have been omitted. The notice allowed an extendable two-month period for reply beginning from the mailing date of the notice.

In response, on November 29, 2004, applicants filed the present petition in which it is alleged that a priority claim to provisional application 60/591,129 was included in the subject application's specification and that a review of the provisional application and the drawings of the subject application reveals that the Figure 12 was present on filing, but was inadvertently not labeled.

It is obvious from the petition that no drawings were actually missing on August 4, 2004. Rather, the figure in between Figures 11 and 13 was not labeled, but should have been labeled Figure 12. However, the notice of Omitted Items in Nonprovisional Application" was correct in stating that Figures 12 as described in the specification appeared to have been omitted. Therefore, the notice was properly mailed and will not be withdrawn.

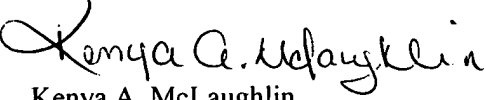
The \$130.00 petition fee will be charged to the deposit account designated in the petition because the present petition was not necessitated by any error on the part of the United States Patent and Trademark Office.

A preliminary amendment correcting the drawing label to reflect Figure 12" should be prior to the first action on the merits.

Accordingly, the petition is dismissed.

The application file is being returned to the Office of Initial Patent Examination for further processing with the presently accorded filing date of August 8, 2004, using the drawings as they were filed on that date.

Any inquiries related to this decision should be directed to Kenya A. McLaughlin at (571)272-3222.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions